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3 In re to Property located at)
4 the 63rd Street owned by the)
KRISHNA LIVING TRUST)

APPEAL FILED WITH CIWMB
(FILE # 34-CR-5017)
OAH No. N2007040062

5 Appellant requests for the hearing on all the grounds as stated on the statements of issues
6 filed with Environmental Management Division ("EMD"). Appellant presents a summary.

7 **ONLY DTSC AND/OR WATER BOARDS HAVE LAGISLATIVE AUTHORITY OVER**
8 **THE SITE HAVING TOXIC REGARDLESS OF THE NATURE OF THE SITE.** The PRC
9 refers to this authority of DTSC and Water Boards. If the contrary is true, then this reference will
10 be superfluous; and the statues authorizing any other agency for the jurisdiction over the site
11 having toxic material will contradict the statues of HSAA or CERCLA [as explained here].
12 According to the statues, EMD has the jurisdiction on the Landfills ACTIVE AFTER 1990.
13 EMD and ALJ used the statues of the active Landfills to impose the penalties.

14 According to the arguments of EMD, **EMD can cause remediation of EMD's choice**
15 **to any land involuntarily WITHOUT FOLLOWING ANY REQUIREMENT; and EMD can**
16 **impose any amount of penalty FOR THE FIRST TIME against "non-operator owners" based**
17 **on the statues for the operators.** EMD clearly shows that **the Legislature is crazy to allow**
18 **unusually high penalties for the acts of others [here, polluters].** Then, it also shows that **the**
19 **Congress is also crazy** as the State laws are similar to those of Federal laws. This further
20 leads to the conclusion that the **President and the Governors are also crazy** to sign such
21 Bills. EMD IS FATALLY AND TOTALLY WRONG. AS THE STATE LAWS ARE THE
22 SAME AS THE FEDERAL LAWS, THESE LAWS APPLY TO EVERY AMERICAN. IF
23 EMD IS CORRECT, ALL THE LAND OWNERS SHALL BE PENALIZED. IT SHALL
24 ALSO MEAN THAT EVERYONE ELSE IS WRONG. THE POSITION OF THE
25 APPELLANT IS SUPPOERTED BY ALL THE LEADING AGENCIES, EXPERTS AND
LAWS. EMD'S POSITION IS SUPPORTED BY EMD ONLY. **ON DAY-TO-DAY**
OPERATIONS, ALL THE NATIONAL AND STATE AGENCIES INFORM THE
FOLLOWING TO THE PUBLIC: FIRST, DTSC AND/OR WATER BOARDS MUST
TAKE ACTION IF A TOXIC ON ANY SITE POSES ANY THREAT TO THE PUBLIC;
SECOND, ONLY DTSC AND/OR WATER BOARDS HAVE JURISDICTION OVER
INVOLUNTARILY REMEDIATION; AND THIRD, ALL THE ACTIONS MUST BE
UNDER CERCLA OR HSAA. IF THE PRESENT DECISION IS THE LAW, THEN ALL
THE NATIONAL AND STATE AGENCIES SHOULD BE INFORMED TO THE
CONTRARY IN ORDER TO AVOID MISINFORMATION TO THE PUBLIC.
KRISHNA CONTACTED MANY NATIONALLY RECONGNIZED EXPERTS TO FIND

1 **THE TRUTH. ACCORDING TO EMD, THE OWNERS "INSTEAD OF POLLUTORS"**
2 **SHALL BE PENALIZED IN CASE OF ILLEGAL DUMPING OR AIR POLLUTION.**

3 No one except ALJ argued that appellant was ever operator. EMD accepts that
4 Krishna Living Trust was never operator. But, these penalties are for operators. PRC 45010(a)
5 clearly states that these penalties are for the operators. The penalties were imposed pursuant to
6 PRC 45011. **Pursuant to PRC 45011(b), EMD must notify operator and should provide an**
7 **opportunity to meet BEFORE IMPOSING THE PENALTIES. Unless this is done, ALL**
8 **THE PENALTIES ARE VOID AND THUS, EMD should leave "non-operator owners"**
9 **alone.** There is no word "owner" in PRC 45010(a) and PRC 45011(b). **Appellant never**
10 **operated any Landfill and there is no evidence of any operation of any Landfill at the**
11 **Waring's Dump. But, ALJ argued that appellant is the operator.** For this, ALJ relied on the
12 following definition (see p. 31 of the decision, emphasis added):

13 **"Operator"** (CIWMB) means the landowner or other person who thorough a lease.
14 franchise agreement or other arrangement with the landowner **becomes legally responsible to**
15 **the State for including, "BUT NOT LIMITED TO", the following requirements**
16 **for a solid waste facility or disposal site:**

17 (A) obtaining a solid waste facility permit;

18 (B) complying with all applicable federal, state and local requirements;

19 (C) the physical operation of the facility or site; **"AND"**

20 (D) closing and maintaining the site during the postclosure maintenance period.

21 ALJ considered requirements (B) and (D) only to consider appellant as an "operator". If
22 it is the case, then every landowner shall be "operator" and there is no need to have two magic
23 sets of words **"BUT NOT LIMITED TO" and "AND"**. Further, this will require
24 every landowner [of any land including landfills] to have a solid waste facility permit (see
25 requirement (A); See requirement (C) uses the word "site" only). Clearly, ALJ is incorrect and
all the requirements should be met for definition of the "operator".

26 **For the sake of arguments, the penalties pursuant to PRC 45011 can be enforced**
27 **against the site owners. Then, HSAA will be meaningless and THE OPERATORS WILL BE**
28 **ABLE TO AVOID ANY AND ALL THE PENALTIES BY SIMPLY TRANSFERRING THE**
29 **OWNERSHIP TO A POOR PERSON.**

30 ALJ did not discuss the following:

31 1. PRC 43503 allows LEA to require the closure plan from "owner" or
32 "operator" on or before July 1, 1990. But, **PRC 43503 ALLOWS ONLY SUSPENSION OR**
33 **REVOCATION OF PERMIT FOR FAILURE TO SUBMIT THE CLOSURE PLANS.**

34 Accordingly, all the penalties in question are not applicable for failure to submit the
35 closure plans. Combining these two statues lead to the following conclusion:

1 **"NO CLOSURE IS REQUIRED IF A SOLID WASTE FACILITY WAS NOT IN**
2 **OPERATION AFTER JULY 1, 1990". THESE STATUTES ARE VERY SPECIFIC**
3 **AND THUS, ARE APPLIED HERE DIRECTLY. THIS FURTHER CONFIRMS**
4 **THAT PRC 44307, PRC 44310, PRC 45010 AND PRC 45011 RELATE TO THE**
5 **OPERATION OF A SOLID WASTE FACILITY. THUS, THE PENALTIES**
6 **FROM EMD ARE VOID AND NULL.**

7 2. The Waring's dump was never a Burn Dump site. As discussed on page 5 of the
8 Protocol of the Burned Dump Site (see Exhibit K), "Burn dump site" means a solid waste
9 disposal site that meets all of the following conditions: (A) Was operated prior to 1972; (B) Is
10 closed; (C) Prior to closure, was a site where open burning was conducted; and (D) was not
11 operated illegally. THE REQUIREMENT (D) IS FROM HSAA OR CERCLA (see fn. 4). **Lisa**
12 **Todd** from EMD testified the following: first, **the site was operated until 1985** (see Page 3,
13 Exhibit J also); second, **the site was operated illegally** (see pages 6 and 7 of Exhibit J also); and
14 third, there is no record of any operation. This testimony clearly indicates no evidence of any
15 operation at the waring's dump. EMD did not present any evidence that there was any open
16 burning at the waring's dump. Therefore, the Waring's dump was never a Burn Dump site.

17 3. **EMD wants remediation because of toxics. HSAA (Health & Saf. Code, §§**
18 **25300-25395.40) CLEARLY STATES ABOUT INVOLUNTARILY REMEDIATION**
19 **BECAUSE OF TOXICS WITHOUT SPECIFYING BURN DUMP SITE OR ANY**
20 **PARTICULAR SITE. In City of Lodi v. Randtron (2004) 118 Cal. App. 4th 337 ("City of**
21 **Lodi"), THE THIRD APPELLATE DISTRICT COURT CONCLUDED THAT ONLY**
22 **DTSC AND/OR WATER BOARDS HAVE JURISDICTION OVER INVOLUNTARILY**
23 **REMEDATION**¹. The statutes of the Bun Dump Site also confirm the following: first, only

24 ¹ **The DTSC is required to select for response action, pursuant to HSAA, sites that pose a**
25 **substantial threat to public health or safety or to the environment and to assign each such**
26 **site to one of two priority tiers. (§ 25356, subds. (b)(1) and (c).) A list of the selected sites**
27 **must be published, revised at least annually, and made available to the public or any interested**
28 **person. (§ 25356, subd. (b)(1).) Once a site is listed, "all actions carried out in response to**
29 **hazardous substance releases or threatened releases ... shall comply with the procedures,**
30 **standards, and other requirements" set forth in HSAA. (§ 25356, subd. (d).) (Page 353;**
31 **EMPHASIS ADDED FOR THE REQUIREMENTS OF INVOLUNTARILY**
32 **REMEDATION)**

33 **HSAA provides a comprehensive and detailed scheme to ensure the timely and cost-**
34 **effective cleanup of hazardous substance release sites. It establishes authority, procedures,**
35 **and standards to carry out the investigation, removal and remediation of contaminated**
36 **sites (§§ 25355, 25356.1.5, 25355.7, 25355.8, 25358.3, subds. (a) and (c), 25363), issue and**
37 **enforce a removal or remedial action order to any RP (§ 25358.3, subds. (a) and (f)), impose**
38 **administrative or civil penalties for noncompliance of an order (§§ 25359, 25359.2), recover**

1 DTSC and Water Boards can have jurisdiction over a site with toxic material²; and second,
2 the statutes of the Burn Dump Site do not affect the jurisdiction of DTSC and Water
3 Boards³. Clearly, DTSC and/or Water Boards shall be the only agencies having
4 jurisdiction over a Burn Dump Site having the hazardous materials. Thus, EMD never
5 had, never has and will never have any jurisdiction over the Waring's dump; and all the
6 orders of EMD and the penalties by EMD are void and null.

7 4. Joe Mello, a member of the Burn Dump Guidance Subcommittee, testified the
8 following on this: first, pursuant to 27 CCR 20080(g), the relevant regulations of Title 27 can not
9 be applied to the sites closed prior to November 27, 1984; and second, only DTSC and Water
10 Boards can have jurisdiction over a site with toxic material (see Exhibit 15). No one else from
11 the Burn Dump Guidance Subcommittee testified.

12 5. The penalties are pursuant to PRC 45011. As the language of this code states,
13 the penalties pursuant to PRC 45011 are applicable to the operators of the solid waste
14 facilities. But, the site owners never operated any solid waste facility and the site was never
15 any solid waste facility⁴, the penalties in question are not applicable. PRC 40123 defines the
16 Disposal site owners and PRC 40160 defines the operators. By defining site owners and
17 operators separately, the Legislature made the difference between site owners and operators very
18 clear. Further, as explained here also, THE LEGISLATURE IS VERY CAREFUL ABOUT

19 costs and expenses incurred by the DTSC in carrying out HSAA (§ 25360, subd. (a)),
20 determine by binding arbitration the apportionment of liability of an RP (§§ 25363, 25356.3,
21 25356.4). seek contribution from other RP's (§ 25359.5) and apply for compensation of loss
22 caused by the release of a hazardous substance. (§§ 25372 to 25381.) (Page 352)

23 ² This conclusion is from the following statutes:

24 Pursuant to the Health and Safety Code, the Department of Toxic Substances Control has general
25 jurisdiction, authority, and responsibility regarding hazardous substance release sites (PRC
48022(e)).

Pursuant to the Water Code, the State Water Resources Control Board and the regional water
quality control boards have general jurisdiction, authority, and responsibility regarding
protection of the waters of the state, including, but not limited to, solid waste and hazardous
waste discharges (PRC 48022(f)).

³ Nothing in this section is intended to limit the authority of the board, the department, the State
Water Resources Control Board, or a regional board pursuant to other provisions of law. (PRC
48022.5(j)).

⁴ The site never had any permit for the solid waste facility. Without a permit, the dump is illegal.
According to HSAA, the site owners can collect the cost of remediation from the
enforcement agency if dumping was in violation of then existing laws.

1 USING THE WORDS "OWNERS" AND "OPERATORS". Pursuant to PRC 45010(a), the
2 penalties pursuant to PRC 45011 are against operators. Another argument is the following:

3 PRC 44307, PRC 44310, PRC 45010 and PRC 45011 use the word "operator" but do
4 not use the word "owner". This confirms that these statutes relate to the operation or
5 the permit for the operation of a solid waste facility. THESE STATUTES ARE
6 UNDER HEADING "REVOCATION AND SUSPENSION OF LICENSE". The
7 words in these statutes also support these statements. An example is the words of
8 PRC 44310. First few words of PRC 44310 state about the hearing under the
9 chapter 4. The chapter 4 relates to permit of the solid waste facilities. EMD
10 IMPOSED THE PENALTIES BY REPLACING THE WORD "OPERATORS"
11 WITH THE WORDS "NON-OPERATOR OWNERS". THE LEGISLATURE wants
12 the operation of Landfills correctly and properly. Accordingly, THE LEGISLATURE
13 IS VERY HARSH IN IMPOSING THE PENALTIES AGAINST OPERATORS (PRC
14 45010(b), PRC 45011 and PRC 45016 [no factor for ability to pay]); BUT, THE
15 LEGISLATURE PROVIDES IMMUNITIES TO THE "NON-OPERATOR
16 OWNERS" (H&S 25395.81 and H&S 25360.2). The "NON-OPERATOR OWNERS"
17 are compensated for their attorney's fees also (H&S 25395.84). Clearly, THE WORD
18 "OPERATORS" CAN NOT BE REPLACED BY THE WORDS "NON-OPERATOR
19 OWNERS". THUS, THE PENALTIES FROM EMD ARE VOID AND NULL.

20 6. For the sake of argument, assume that EMD is the Local Enforcement Agency
21 ("LEA"). Then, Involuntary Remediation of the site is not allowed because EMD did not fulfill
22 the legal requirements of remediation. For example, a remediation requires certain analysis of the
23 costs and effectiveness of the remedial alternatives, REQUIRES PUBLIC MEETINGS, and also
24 requires inclusion on the National Priority List (see 40 CFR sections 300.425(b)(1), 300.430(c),
25 300.430(f)(3), 300.430(f)(6), 300.430(e)(7); United States v. W.R. Grace & Co., 429 F.3d 1224,
1226-1252 (9th Cir. 2005), Exhibit 10).

For the reasons stated here, Singh requests for the following: first, to rule that EMD does
not have any jurisdiction over the Waring's Dump; and second, the penalties are set aside.

Submitted Respectfully,

R. Singh

Siddha, Kirtana, Narayan, Raksha Baro.